



AN ACT AUTHORIZING LOCAL GOVERNMENTS TO EXECUTE A LIEN FOR PURPOSES OF DEBRIS REMOVAL; AMENDING SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND 27-18-1502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 27-18-101, MCA, is amended to read:

**"27-18-101. Cases in which property may be attached.** (1) Property may be attached in:

- (a) an action upon a contract, express or implied, for the direct payment of money where the contract:
  - (i) is not secured by any mortgage or lien upon real property; or
  - (ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; ~~and~~
- (b) an action based upon a statutory stockholders' liability; and
- (c) an action by a local government for the purpose of ensuring debris removal if it is determined that the underlying property is worth less than the cost of debris removal.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money."

**Section 2.** Section 27-18-202, MCA, is amended to read:

**"27-18-202. Plaintiff's affidavit.** When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone ~~in his~~ on the plaintiff's behalf stating:

- (1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);
- (2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;
- (3) facts creating a reasonable belief that the defendant:

- (a) is leaving or about to leave this state taking ~~with him~~ property, money, or other effects which might be subjected to payment of the debt;
- (b) is disposing or about to dispose of ~~his~~ property which would be subject to execution;
- (c) has the power to dispose of or conceal or remove from the state property ~~which that~~ would be subject to execution; or
- (d) is likely to suffer liens or encumbrances on ~~his~~ the defendant's property ~~which that~~ would be subject to execution;
- (4) a particular description and the actual value of the property to be attached;
- (5) facts creating a reasonable basis for a local government belief that the underlying property is worth less than the cost of debris removal."

**Section 3.** Section 27-18-203, MCA, is amended to read:

**"27-18-203. Affidavit requirements when debt not yet due.** Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have~~ debt has become due, or upon a local government debris removal issue, when it ~~shall appear~~ appears by the affidavit, in addition to what is required in 27-18-202:

- (1) that the defendant is leaving or is about to leave this state, taking ~~with him~~ property, ~~moneys~~ money, or other effects ~~which that~~ might be subjected to the payment of the debt, for the purpose of defrauding ~~his~~ the defendant's creditors or a local government; or
- (2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his~~ the defendant's creditors or a local government."

**Section 4.** Section 27-18-204, MCA, is amended to read:

**"27-18-204. Plaintiff's undertaking.** Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, except a local government, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such the amount be is~~ is \$1,000 or under or, in case the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ exceeds \$1,000, then in a sum equal to ~~such that~~ that amount. ~~In no case shall an~~ An undertaking may not be required ~~exceeding in amount~~ the sum of \$20,000. The condition of ~~such the~~ the undertaking ~~shall~~ must be to the effect that if the defendant recovers judgment or if the court

finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages ~~he~~ the defendant may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

**Section 5.** Section 27-18-1502, MCA, is amended to read:

**"27-18-1502. Plaintiff's undertaking.** Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, except a local government, with two or more sureties, in a sum of not less than \$50 or more than \$300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages ~~which he~~ that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

**Section 6. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0608, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 608  
INTRODUCED BY J. SESSO

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